

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HARRY J. WILLIBY,

Plaintiff,

No. CIV S-04-2560 DFL JFM P

vs.

JEANNE S. WOODFORD, et al.,

Defendants.

ORDER

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Plaintiff, a former state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On February 27, 2007, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within ten days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed February 27, 2007, are adopted in full;

2. Defendants' June 12, 2006 motion to dismiss is granted in part and denied in part;

3. Plaintiff's claims of racial discrimination, excessive force, and failure to protect raised against defendants Whitfield, Knudsen, Chirilla and Soliz are dismissed without prejudice for failure to exhaust administrative remedies prior to suit;

4. This action shall proceed solely on plaintiff's Eighth Amendment and pendent state law negligence claims arising from allegations that defendants Woodford, Kanan, Carey, Traquina, McIntyre, Kurk, Cheung and Sheehan failed to provide or authorize required dental work;

5. Defendants Woodford, Kanan, Carey, Traquina, McIntyre, Kurk, Cheung and Sheehan shall answer, within ten days from the date this order, plaintiff's Eighth Amendment and pendent state law negligence claims arising from their alleged failure to provide or authorize required dental work; and

6. Plaintiff's July 24, 2006 motion for Rule 11 sanctions is denied.

DATED: March 19, 2007

/s/ David F. Levi
UNITED STATES DISTRICT JUDGE

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